



BEFORE THE STATE BOARD OF EQUALIZATION
OF THE STATE OF CALIFORNIA

In the Matter of the Appeal of
AMERICAN PAVING COMPANY

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For Appellant: Milton Torigian, Certified Public Accountant

For Respondent: Burl D. Lack, Chief Counsel
Wilbur F. Lavelle, Associate Tax Counsel

O P I N I O N

This appeal is made pursuant to section 26077 of the Revenue and Taxation Code from the action of the Franchise Tax Board in denying a claim of American Paving Company for refund of franchise tax in the amount of \$75 for the taxable year ended November 30, 1959.

Appellant, a California corporation, filed articles of incorporation November 7, 1958, and adopted an accounting period ending November 30 of each year. Inasmuch as appellant commenced doing business December 1, 1958, a "no activity" return was filed February 15, 1959, for the short period of November 7, 1958, to November 30, 1958. A remittance of \$25, the minimum tax then required by sections 23151 and 23153 of the Revenue and Taxation Code, accompanied the return, covering prepayment for the taxable year December 1, 1958, to November 30, 1959. This prepayment was required in view of sections 23222 and 23223. Appellant thereafter sustained a net loss during that taxable year. Consequently, only the minimum tax was due for that year.

During 1959 the California Legislature increased the minimum tax from \$25 to \$100 by amending sections 23151 and 23153, effective June 24, 1959. (St. Ass. 1959, ch. 1127, p. 3212.) In view of the amendment, respondent Franchise Tax Board made demand upon appellant for \$75 additional minimum tax for the taxable year December 1, 1958, to November 30, 1959. Appellant paid the \$75 and filed a claim for refund.

Appellant contends that the franchise tax liability for the taxable year ended November 30, 1959, was satisfied when the minimum tax of \$25 was paid. Respondent contends that the minimum tax for this period was \$100.

Section 18 of the aforementioned chapter 1127 provides, in part:

If a corporation's income year ended on or
before the effective date of this act the
minimum tax shall be twenty-five dollars (\$25);

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if its income year ends after such date the minimum tax shall be one hundred dollars (\$100).

Inasmuch as the fiscal year December 1, 1958, to November 30, 1959, was the year in which business was commenced and was the first taxable year constituting a twelve-month period, the said fiscal year was the income year constituting the accounting period upon which the tax for the same year was to be based, (Sections 23222, 23223, 23041.) Therefore, pursuant to the clear language quoted above, the minimum tax is \$100 because the income year ended after the effective date of chapter 1127.

In September 1959 respondent issued bulletin OD896A concerning the application of 1959 tax increases to fiscal year taxpayers. (See 2 CCH Cal. Tax Cas. Par. 201-330 and 2 P-H State & Local Tax Serv. Cal. Par. 13611.) Appellant relies on the following portion of that bulletin:

Commencing corporations (those corporations taxable under the franchise tax provisions of the law and filing their first return, or their second return if the first return was for a period of less than twelve months of operations) with an accounting period ending in 1959 will compute their tax for the taxable year which coincides with the accounting period at the rate in effect on December 31, 1958.

The above quotation, however, referred to corporations which derived net income and were subject to a rate increase which was enacted together with the increase in the minimum tax. The enactment applied the rate increase to fiscal years differently from the minimum tax increase. (See Stats. 1959, ch. 1127, p. 3221.) The bulletin referred to the minimum tax increase as follows:

For fiscal years ended June 30, 1959, and later the minimum amount of tax for any taxpayer taxable under the franchise tax provisions of the Law is \$100.

Thus, the bulletin conforms to section 18 of chapter 1127 which provides that if the income year ends after the effective date of the legislation, the minimum tax shall be \$100.

Appellant also cites section 23112 of the Revenue and Taxation Code, which provides that the tax accrues on the first day of the taxable year. The only question thus raised is whether section 18 of chapter 1127 is invalid by operating retroactively. The Legislature, however, may increase the tax at any time during the taxable year, (American States Water Service Co. v. Johnson, 31 Cal. App. 2d 606 (88 P.2d 770); Holmes v. McColgan, 17 Cal. 2d 446 (110 P.2d 428), cert. denied, 314 U.S. 636 (86 L. Ed. 510); Sunset Nut Shelling Co. v. Johnson, 49 Cal. App. 2d 354 (121 P.2d 849).) On the authority of those cases, we have recently decided that section 18 operated validly in a situation substantially identical to that confronting us here. (Appeal of Sports

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Publications, Ltd., Cal. St. Bd. of Equal., Jan. 10, 1963, CCH Cal. Tax Rep, /
Par. 202-136, 2 P-H State & Local Tax Serv. Cal. Par. 13295.)

It is our conclusion that appellant is not entitled to a refund.

O R D E R

Pursuant to the views expressed in the opinion of the board on file in this proceeding, and good cause appearing therefor,

IT IS HEREBY ORDERED, ADJUDGED AND DECREED, PURSUANT to section 26077 of the Revenue and Taxation Code, that the action of the Franchise Tax Board in denying the claim of American Paving Company for refund of franchise tax in the amount of \$75 for the taxable year ended November 30, 1959, be and the same is hereby sustained,

Done at Sacramento, California, this 17th day of April, 1963, by the State Board of Equalization.

<u>Paul R. Leake</u>	, Acting Chairman
<u>Richard Nevin</u>	, Member
<u>Geo. R. Reilly</u>	, Member
<u>Alan Cranston</u>	, Member
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ATTEST: Dixwell L. Pierce , Secretary